

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 216 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

JALIMSING ALIAS JULIYO

MUSAISING THAKUR

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner
MS PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 16/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective
parties.

The petitioner challenges the order of preventive
detention dated 27th November, 1998, made by the
Commissioner of Police, Ahmedabad City, under the powers
conferred upon him under sub-section (1) of section 3 of

the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

The petitioner is alleged to be a 'bootlegger' within the meaning of section 2 (b) of the Act, and his activities are found to be prejudicial to the maintenance of public order within the meaning of section 3 (4) of the Act and the explanation thereto. Three offences punishable under the Bombay Prohibition Act are registered against the petitioner, two of which are pending trial and one of them, on the date of order of detention, was pending investigation. In each of the cases, the petitioner was found to be in possession of substantial quantity of country liquor. Besides, two witnesses have given statements in respect of the nefarious activities of the petitioner and its adverse effect on the public tranquility and the even tempo of life. They have particularly referred to the incidents of 25th September, 1998 and 2nd November, 1998. In both the incidents, the petitioner is alleged to have beaten the witnesses and to have used knife to cow down the witnesses and to intimidate the people gathered on the spot of the incident. The Detaining Authority has recorded his subjective satisfaction in respect of the need to withhold the identity of the witnesses and has accordingly under his powers conferred under section 9 (2) of the Act withheld the identity of the witnesses. In each of the offences registered against the petitioner, the petitioner is stated to have been released on bail and even after his release on bail, he has continued his nefarious activities.

The order of detention is challenged on the grounds - (a) The statements recorded under section 161 CRPC have neither been considered nor furnished to the petitioner along with the grounds of detention; (b) The activities of the petitioner can not be said to be prejudicial to the maintenance of public order; (c) The Detaining Authority has without verifying the correctness of the statements made by the witnesses relied upon the same and has based his subjective satisfaction on such statements; and (d) The representation made by the learned advocate on behalf of the petitioner on 28th July, 1999, has not been considered and decided and the materials demanded under the said representation have not been supplied.

The petitioner is alleged to be dealing in country liquor. This court, in the matter of POPAT MOHAN VAGHARI VS STATE OF GUJARAT & ORS (1989 {1} GLH 551), has

held that the activity of storing and selling country liquor to the public is an activity prejudicial to the maintenance of public order within the extended meaning given under the provision contained in section 3 (4) of the Act and no further evidence is required for the same. It, therefore, can not be said that the petitioner's activities are mere problem of law and order. Undoubtedly, the petitioner's activities are prejudicial to the maintenance of public order. The Detaining Authority has in his counter-affidavit categorically stated that he had personally verified the genuineness and correctness of the statements of the witnesses with respect to the incidents referred to by them and was satisfied about genuineness of the fear expressed by them. The Detaining Authority has satisfied himself and it can not be said that the subjective satisfaction recorded by the Detaining Authority suffers from the vice of non-application of mind or that he has wrongly exercised the power conferred under section 9 (2) of the Act. As regards the statements recorded under section 161 CRPC, the averments made in the petition are found to be vague. It is merely stated that the statements recorded under section 161 CRPC are not considered or supplied to the petitioner. The petition does not disclose which are the statements which were recorded in course of investigation and have not been considered and supplied by the Detaining Authority. Besides, the representation made on 28th July, 1999, appears to have been made with an ulterior purpose. The representation has been made long after the date of detention and after the present petition was posted for hearing. Even if the said representation were not considered expeditiously, or the demands made therein were not accepted, the order of detention can not be vitiated. It would not be out of place to mention here that in two of the offences registered against the petitioner, chargesheets were filed before the date of detention and it should, therefore, be presumed that all the materials gathered in course of investigation have been supplied to the petitioner along with the chargesheets. The last of the offences was registered against the petitioner on 6th September, 1998. In the said case, country liquor was recovered from the possession of the petitioner and was at the time of the order pending for investigation. It is not known whether by now the investigation is over and the chargesheet is filed or not. But it is undisputed that in respect of the said matter also, the Detaining Authority has not considered the report of the chemical examination of the liquor allegedly recovered from the petitioner. No such report has been furnished to the petitioner. The report of the chemical examination being

a vital document ought to have been considered by the Detaining Authority and also should have been supplied to the petitioner along with the grounds of detention. It is not the case of the Detaining Authority that such report was not available at the time of the order of detention. The Detaining Authority has not considered this vital document while recording his subjective satisfaction. Hence, the same is vitiated and so is the continued detention of the petitioner.

Petition is, therefore, allowed. The order dated 27th November, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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JOSHI